

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 607 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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FARUKBHAI LAL MIRZA SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MR MM TIRMIZI for Petitioner  
MR U.R.BHATT ADDL.GOVERNMENT PLEADER  
for Respondent No. 1  
MR JD AJMERA for Respondent No. 4

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 20/03/98

#### ORAL JUDGEMENT

By this application, the petitioner, who is the detenu, calls in question the legality and validity of the detention order dated 26th December, 1997, passed by the District Magistrate, Ahmedabad, invoking his powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'the Act'), pursuant to which he is arrested, and at present is under detention.

2. The petitioner is serving in the shop of Kundanbhai Dulabhai Shaikh, Parvezbhai Ahmedbhai Shaikh and Shahmohmad Habibbhai Shaikh. His masters are illegally dealing in blue coloured kerosene getting the quota thereof illegally and storing the same in secluded places. They were also selling the same at the higher prices, or supplying to industrial units or businessmen so as to have huge profits. They were thereby encouraging black-economy. Having come to know about such mal practices on 13.12.97 when the place where the kerosene was kept was raided, the petitioner was also found involved in such mal-practices. The raiding party could see that in 26 barrels 5080 litres of kerosene, in 4 barrels 785 litres of kerosene, and in 7 barrels 1400 litres of kerosene was there, while 2 barrels were empty. All these barrels were found either in Matador No.GQA 5354 or in rikshaw GJ-1-X-4535 because the vehicles were ready to leave for effecting delivery to black-marketeers. True and full accounts were not maintained, required register were not maintained and bill books were misguiding. The people were deprived of kerosene. Helpless people were exploited. At a soaring prices the kerosene was sold to them. For keeping the pot boiling at home the poor people had to truckle with to the petitioner. His black-economy for unfair enrichment was harmful to the national economy and common good. By agonising the people he used to gloat. Getting blue-coloured kerosene he used to convert into white-coloured kerosene by chemical process. His black marketing activities were going berserk. He had not maintained books of accounts and files. The statements of some persons were recorded. The supply officers and others were shocked to know that petitioner was having wide network. By unlawful means he used to get the kerosene in huge quantity whenever and wherever he wanted. He was in the market wielding sceptre and wile was his motto. The District Magistrate then studied the papers and found that stern action against the petitioner was required to be taken. He however found that any action under general law would fall short as the law was sounding dull. According to him, the only way out was to pass the impugned order and arrest the petitioner and keep him under detention. At last therefore the impugned order came to be passed and the petitioner was arrested. At present, therefore he is under detention.

3. On several grounds, the order of detention is assailed, but at the time of hearing before me, both the parties confined to the only point namely consideration of petitioner's representation. According to the petitioner he sent his representation on 29..1.1997 to

the Honourable Minister for Food and Civil Supply Department, Sachivalaya, Gandhinagar, It was delivered there on 2.2.98; but uptill now his representation has not been considered. On the other end it is submitted that the representation is not at all received. When that is so the question of consideration did not arise. Before I proceed to decide the merits of the rival contentions, a look at certain decisions making the law clear is worth-while.

4. Under Article 22(5) of the Constitution of India, whenever such detention order is passed the detenu has to be informed providing necessary documents and particulars so that he can make effective representation against the order passed. If he then makes the representation after the receipt thereof, the concerned authority has to deal with the same promptly and dispose the same of at his earliest as liberty of the citizen is put at the highest pedestal in the Constitution. Whenever without a trial a man is confined, the authority passing the order or receiving the representation must be prompt in disposing of the representation, but if there is undue delay the order of detention if passed has to be declared unconstitutional and illegal. At this stage, it is necessary to refer the decision of the Supreme Court rendered in the case of Raghavendra Singh vs. Superintendent, District Jail, Khanpur and others - AIR 1986 S.C. 356, wherein it is laid down that the representation must be dealt with promptly and disposed of without any unjust delay. Till the same is disposed of without wasting time the same has to to be attended and final decision has to be reached. If the representation is received by one authority who is not supposed to deal with the same, his duty is to promptly send it to the concerned department or authority so that the said authority may after the receipt thereof deal with the same promptly and dispose the same of at his earliest without wasting time. In the case before the Supreme Court, the representation was sent to the President's Secretariat, and the Prime Minister's Secretariat received the same on 19th March 1985; and thereafter it was sent to the Ministry of Home Affairs on 25th May 1985; the same was then dealt with on May 31st, 1985. There was, therefore no delay so far as the Ministry of Home Affairs was concerned. But there was a delay in sending the representation from Prime Minister's Secretariat to the Ministry of Home Affairs. In that regard, it was argued before the Supreme Court that the representation should have been addressed to the Ministry of Home Affairs and not to the President or Prime Minister because the President or the Prime Minister

receives thousands of memorandums or representations from every part of the country and therefore it was not expected to be dealt with as expeditiously as possible as they would be considered had the same been addressed to the appropriate ministry. Dealing with the contention, it is observed that, even if the representation is sent to the Prime Minister or the President, the same has to be sent to the concerned department for taking appropriate action. There may be some delay in sending the representation from one Secretariat to the concerned department of Ministry, and in that case some allowance may be made for the time taken in forwarding the representation to the appropriate Ministry, and even taking all such time allowances, if the representation is not dealt with promptly and no appropriate order at the earliest is passed, the detenu will be entitled to be set at liberty. It is also observed that even if the representation is addressed to the President or the Prime Minister, no fault can be found with the representation because the "Central Government" means the 'President' or the 'Prime Minister', and if the representation is addressed to the President or the Prime Minister, the same should be considered to be the representation properly addressed to the Central Government.

5. Similar view is also taken by the Supreme Court in the case of Lallubhai Jopgibhai Patel, vs. Union of India and Others AIR 1981 S.C. 728 = 1981 Cr.L.J.288, Mentioning about supply of materials and language thereof it is held that if the representation is made by the detenu and forwarded to the Central Government at his instance, is not disposed for a long time, the continuation of detention will be illegal. In another case of Amir Shad Khan and another Vs. L. Hmingliana AIR 1991 Supreme Court 1983, it is held that if the detenu makes the representation and requests the State Government to forward the same to Central Government for consideration, the State Government is under obligation to do so and if State Government refused to accede to his request, it would be unjust and in total disregard of the right conferred on the detenu by Article 22(5). It thus shows the importance of representation and that importance cannot be marred by delay in the submission. What is held by this Court in the case of Dr.Narayan Tukaram Baddi Vs. The District Magistrate and Others 1995 (2) G.L.H. 1062 is that the detenu is not only to be informed the grounds of his detention so as to provide earliest opportunity to make representation but there is also the corresponding obligation to prompt consideration of the representation. Though no time limit is prescribed within which the representation should be

considered, the utmost promptitude, expedition and diligence is expected from the authority obliged to consider such representation. Any remissness, indifference or avoidable delay on the part of the authority obliged to consider representation would vitiate the continued detention of the detenu. What becomes clear from all these authorities is that reasonable delay or uncontrollable delay will not be fatal but unjust or avoidable delay or deliberate delay will certainly be fatal to the detaining authority if the representation is not considered promptly because nothing can be taken lightly or casually as the person is detained without a trial. If there is a delay, it has to be explained, and if not properly explained filing affidavit certainly delay that can be termed unjust will be fatal and continued detention must be held to be illegal.

6. In the case on hand receipt of the representation is the point in controversy because the petitioner alleges that he sent the representation by post on 3.1.98, while the State Government has come out with a case that it has so far not received the representation.

7. If the representation is not received at all the ground of delay in considering or not at all considering the representation will gain no ground to stand upon and will lose value, but materials on record show that the representation is received by the opponent - State and not considered till today. The slip acknowledging the receipt of the representation by the State Government is annexed with the affidavit filed by the petitioners. It shows that on 2.2.98 the concerned Civil Supply Department, Sachivalaya, Gandhinagar received the representation. After the receipt thereof the Government ought to have promptly considered the same and as urged by the petitioner taking out the copies of his representation the same ought to have been forwarded to the Central Government for consideration, but that is not done till day, may be owing to negligence or remissness or inaction or sluggishness on the part of the concerned officer or member of the staff. However it is the fact that the authority, under the belief that the representation is not received has not considered the same. The belief of the officer is not the valid reason for not considering the representation. If the authority was kept ignorant by the concerned members of the staff, Departmental action can be taken against them but in the cases of detention nothing can be taken casually, for the liberty of the citizen and constitution imperatives thereof embodied in Article 22(5) cannot be

undermined. The representation in this case when not dealt with utmost expedition, and inaction is not justifiable, the continuation of petitioner's detention is illegal.

8. For the aforesaid reasons the petition is allowed and impugned detention order dated 26.12.97 being unconstitutional and illegal is hereby quashed and set aside, and the petitioner is ordered to be set at liberty forthwith if not required in any other case. Rule accordingly made absolute.

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(ccs)